

# **State of Alaska FY2008 Governor's Operating Budget**

## **Department of Law Statehood Defense Component Budget Summary**

## Component: Statehood Defense

### Contribution to Department's Mission

The Statehood Defense unit of the Department of Law provides advice and representation to state agencies on issues raised by conflicts between state and federal jurisdiction.

### Core Services

The Statehood Defense attorneys handle a variety of complex cases arising out of state/federal jurisdictional conflicts that will have a profound and lasting impact on management of Alaska's natural resources. The state frequently must defend against encroachment by the federal government into areas traditionally regulated by the state. The State of Alaska took title to all the lands underlying navigable waters within its borders at statehood; under the Equal Footing Doctrine, such lands pass to new states automatically, as a matter of constitutional right. However, in response to the United States' reluctance to recognize the state's title, Alaska has been forced to protect its title in court in several instances, including an original action in the United States Supreme Court to establish to clarify title to the tide and submerged land underlying marine waters in Southeast Alaska. We are also working cooperatively with the United States to obtain recordable disclaimers of title to submerged lands where the parties can agree.

Because of the patchwork of land ownership in Alaska among the state, the United States, and private landowners, and because of the lack of public infrastructure, access is extremely important to the public. The Statehood Defense group works on RS 2477 rights-of-way, access in National Forests and across other federal land, Alaska Native Claims Settlement Act (ANCSA) 17(b) and other easements, and the state periodically reviews proposed federal Public Use Management Plans to comment on public access and other management issues. Statehood Defense attorneys also provide legal advice and assistance to the Governor's Office and state agencies on matters of federal Indian law.

The Statehood Defense unit provides ongoing legal advice to the Department of Fish and Game (ADF&G) as it works to implement dual management of subsistence resources, and closely monitors the actions of the Federal Subsistence Board. The Statehood Defense unit also works on issues arising under the Endangered Species Act, the Pacific Salmon Treaty, the Magnuson-Stevens Fishery Conservation and Management Act, and other federal laws to protect state fishery and wildlife resources and the state's role in managing them. The Statehood Defense unit frequently comments on and drafts amendments to bills before Congress on a wide range of resource related topics including amendments to the Alaska Native Claims Settlement Act (ANCSA), the Alaska National Interest Lands Conservation Act (ANILCA), and the Endangered Species Act. Statehood Defense attorneys also assist with state comments on federal proposals such as the Forest Service Roadless regulations, federal land management plans, and designation of new national monuments in Alaska. The unit also assists the Department of Natural Resources (DNR) with its efforts to secure Alaska's Statehood Act land entitlement.

### FY2008 Resources Allocated to Achieve Results

**FY2008 Component Budget: \$1,285,200**

**Personnel:**

Full time	9
Part time	0
<b>Total</b>	<b>9</b>

### Key Component Challenges

During FY2008, the Statehood Defense unit will work to protect and ensure access to state and private lands and on public waters across Alaska through assertions of RS 2477 rights-of-way, ANILCA access rights, and ownership of navigable waters. Statehood Defense attorneys will work with the Department of Natural Resources (DNR) and ADF&G

to file with the Bureau of Land Management (BLM) additional applications for recordable disclaimers of interest to navigable waters, and provide information to BLM that convince it to declare waterways navigable within the survey windows it is completing. The unit will continue work to secure the state's land entitlement from the federal government is fulfilled.

The Statehood Defense unit will participate in and monitor the ongoing federal actions relating to application to Alaska's Tongass and Chugach National Forests of a national Roadless Rule. The unit will participate in the Endangered Species Act (ESA) process as it relates to Pacific salmon and ensure adherence to the Pacific Salmon Treaty. The unit will continue to closely monitor the federal subsistence program, assist ADF&G in preparation of state comments, and challenge actions by the Federal Subsistence Board when necessary. Attorneys will review and comment on proposed federal legislation to complete conveyances under ANCSA and ANILCA and the Alaska Native Allotment Act by 2009, and will review proposed federal public use management plans for federal lands. The unit will also continue to work on issues relating to assertions of tribal sovereignty that impact state interests.

### **Significant Changes in Results to be Delivered in FY2008**

No changes in results delivered.

### **Major Component Accomplishments in 2006**

The state's attorneys obtained entry of the final decree of the United States Supreme Court quieting title to most of the submerged lands in the Tongass National Forest in the state.

The state's attorneys filed several requests for reconsideration of decisions by the Federal Subsistence Board. Attorneys filed suit on the denial of the request for reconsideration by the Federal Subsistence Board of a customary and traditional use determination related to Chistochina's moose determination. The state filed briefs in a lawsuit against the United States challenging the manner in which the federal agencies applied the Federal Reserved Water Rights doctrine in federal subsistence regulations.

Filed an amicus brief in support of the "State Petition Rule" and against reinstatement of the "Roadless Rule" in federal district court in California.

The state continued to file new applications with the Bureau of Land Management (BLM) for recordable disclaimers of interest (RDI) for lands underlying navigable waters and has received a number of RDIs from BLM. The state has continued to educate landowners about the public's right to use state navigable waters.

The state continued monitoring the National Park Service's efforts to develop a User's Guide to access to inholdings in Alaska's National Parks under section 1110(b) of ANILCA.

The Department of Law participated on behalf of the state in a number of lawsuits related to logging activities and timber sales in the Tongass National Forest and filed an amicus brief in the Roadless Rule cases in California.

Statehood Defense attorneys continued to monitor litigation related to pacific salmon in Washington and Oregon.

The state continued to work on a quiet title action against the United States and others to quiet title to two RS 2477 rights-of-way in northern Alaska. The state settled with one defendant who platted the right-of-way on his property and obtained default judgments against several other defendants.

Attorneys continued to participate in litigation between the U.S. Forest Service and environmental groups over logging in the Tongass National Forest.

Obtained a favorable decision from the Interior Board of Land Appeals that BLM could not terminate administratively a public access easement near Unalaska that was reserved in a patent.

Continued to monitor and comment on proposed amendments to the Magnuson-Stevens Act.

Prevailed in an appeal to the Interior Board of Land Appeals challenging a BLM decision that purported to convey to AHTNA islands with the Copper River which because they were then submerged lands passed to the state at statehood.

Settled a lawsuit with Shoreline Adventures involving the right to recover artifacts from an 1898 shipwreck.

## Statutory and Regulatory Authority

AS 44.23.020

### Contact Information

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**Statehood Defense  
Component Financial Summary**

*All dollars shown in thousands*

	FY2006 Actuals	FY2007 Management Plan	FY2008 Governor
<b>Non-Formula Program:</b>			
<b>Component Expenditures:</b>			
71000 Personal Services	552.2	835.8	1,108.2
72000 Travel	6.7	10.3	9.2
73000 Services	185.1	475.8	135.6
74000 Commodities	8.4	34.5	29.0
75000 Capital Outlay	3.2	6.4	3.2
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
<b>Expenditure Totals</b>	<b>755.6</b>	<b>1,362.8</b>	<b>1,285.2</b>
<b>Funding Sources:</b>			
1004 General Fund Receipts	755.6	1,362.8	1,285.2
<b>Funding Totals</b>	<b>755.6</b>	<b>1,362.8</b>	<b>1,285.2</b>

**Summary of Component Budget Changes  
From FY2007 Management Plan to FY2008 Governor**

*All dollars shown in thousands*

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
<b>FY2007 Management Plan</b>	<b>1,362.8</b>	<b>0.0</b>	<b>0.0</b>	<b>1,362.8</b>
<b>Adjustments which will continue current level of service:</b>				
-Transfer Funds from Legislation/Regulations to Adjust Personal Services Vacancy Factor	150.0	0.0	0.0	150.0
-Remove Statehood Entitlement Issues Sec 48(c) CH 159 SLA 2004 P 105 L 10 (SB 283) Lapses 6/30/09	-350.0	0.0	0.0	-350.0
-FY 08 Health Insurance Increases for Exempt Employees	1.3	0.0	0.0	1.3
<b>Proposed budget increases:</b>				
-FY 08 Retirement Systems Rate Increases	121.1	0.0	0.0	121.1
<b>FY2008 Governor</b>	<b>1,285.2</b>	<b>0.0</b>	<b>0.0</b>	<b>1,285.2</b>

Statehood Defense Personal Services Information				
Authorized Positions			Personal Services Costs	
	<u>FY2007</u> <u>Management</u> <u>Plan</u>	<u>FY2008</u> <u>Governor</u>		
Full-time	9	9	Annual Salaries	663,624
Part-time	0	0	Premium Pay	0
Nonpermanent	0	0	Annual Benefits	458,943
			<i>Less 1.28% Vacancy Factor</i>	(14,367)
			Lump Sum Premium Pay	0
<b>Totals</b>	<b>9</b>	<b>9</b>	<b>Total Personal Services</b>	<b>1,108,200</b>

Position Classification Summary					
Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	0	0	1
Attorney III	1	0	0	0	1
Attorney IV	4	0	0	0	4
Attorney VI	1	0	0	0	1
Law Office Assistant I	1	0	0	0	1
Paralegal II	1	0	0	0	1
<b>Totals</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>9</b>